

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:
Mark C. Boomer et al.

Application No.: 10/708,919

Filed: March 31, 2004

For: ADJUSTABLE-ANGLE SPINAL FIXATION
ELEMENT

Confirmation No.: 2918

Art Unit: 3733

Examiner: D. C. Comstock

MS Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of Transmission (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being electronically filed via EFS-Web
to: MS Appeal Brief – Patents, Commissioner for Patents on:

Date: September 10, 2008



Lisa Adams, Reg. No. 44,238

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Dear Sir:

Appellant files this paper in response to the second Notification of Non-Compliant Appeal Brief mailed September 5, 2008.

At the outset, Appellant respectfully objects to the Notification. The Examiner objects to the SUMMARY OF THE CLAIMED SUBJECT MATTER as failing to refer to the specification by page and line number. First, the Examiner should have made this objection in the first Notice of Non-Compliant Appeal Brief. Second, the SUMMARY OF THE CLAIMED SUBJECT MATTER refers to the specification by *paragraph* numbers, which are the equivalent of page and line numbers. The application was not filed with page and line numbers, but instead was filed using software provided by the USPTO that utilizes paragraph numbers, as specifically preferred by the

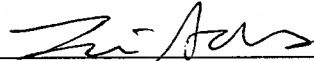
USPTO. The reference to paragraph numbers is thus more than sufficient to identify support in the specification for the claimed subject matter.

Regardless, attached hereto is Replacement Appeal Brief which includes the previously-edited STATUS OF CLAIMS section, as amended in a response filed on June 20, 2008 to the first Notice of Non-Compliant Appeal Brief, as well as an edited SUMMARY OF THE CLAIMED SUBJECT MATTER section, revised to replace the paragraph numbers with page and line numbers.

The Appellant believes the Appeal Brief is now in compliance with 37 C.F.R. 41.37.

No fees are believed to be due with this response, however the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 141449, under Order No. 101896-241.

Respectfully submitted,



Lisa Adams, Reg. No. 44,238
Attorney for Applicant(s)

Date: September 10, 2008

Nutter McClennen & Fish LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210
Tel: (617)439-2550
Fax: (617)310-9550

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